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Attorneys for the Plaintiff
United States Department of Labor

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HILDA L. SOLIS,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

CUONG VIET DO, an individual, **THE MILI GROUP, INC.** A California corporation, and
THE MILI GROUP RETIREMENT PLAN,
an employee benefit plan.

Defendants.

) Case No. C10-03823 LHK

) Related Case No. C10-04026 LHK

) **CONSENT JUDGMENT & ORDER**

1 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of La-
2 bor, Employee Benefits Security Administration (“Secretary”) pursuant to her authority
3 under §§ 502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974
4 (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and (5), has filed a Complaint against Defendants
5 Cuong Viet Do, The Mili Group, Inc. and The Mili Group Retirement Plan (“Plan), an
6 employee benefit plan.¹

7 A. The Secretary, Cuong Viet Do, The Mili Group, Inc., and The Mili Group
8 Retirement Plan (collectively, “the parties”) admit that the Court has jurisdiction over
9 this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in
10 the San Jose Division of the Northern District of California pursuant to ERISA
11 § 502(e)(2), 29 U.S.C. § 1132(e)(2).

12 B. On January 24, 2011, the Clerk entered a default against Defendants. The
13 parties agree that the entry of default shall be set aside.

14 C. The parties agree to the entry of this Consent Judgment & Order. The par-
15 ties further agree that this Consent Judgment & Order shall fully settle all claims of the
16 Secretary asserted in the Complaint filed in this matter.

17 D. Defendants acknowledge receipt of the Secretary’s Complaint in this action
18 and hereby waive service of process of the Summons and Complaint.

19 E. The parties expressly waive Findings of Fact and Conclusions of Law.

20 F. The Defendants neither admit nor deny the allegations alleged in the Com-
21 plaint.

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27 ¹ The Plan is named in the Secretary’s Complaint as a party necessary for
28 complete relief pursuant to Fed. R. Civ. P. 19(a).

1 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

2 1. Defendants Cuong Viet Do ("Defendant Do") and the Mili Group Inc. are
3 jointly and severally liable for \$155,000 in losses caused to the Plan as alleged in the
4 Secretary's Complaint, and judgment is hereby entered against them in that amount.²

5
6 2. Defendant Do shall restore \$155,000 in Plan losses ("Amount Due") to the
7 Plan. The identified losses shall be restored to the Plan in accordance with the payment
8 schedule set forth in Paragraph 6, *infra*.

9
10 3. Defendants Do and The Mili Group Inc. are permanently enjoined and re-
11 strained from violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.

12 4. Defendant Do is hereby removed as Trustee to the Plan and is further per-
13 manently enjoined and restrained from future service as a fiduciary of, or service pro-
14 vider to, any ERISA-covered employee benefit plan, except that Defendant Do may be
15 required to perform in a limited fiduciary capacity to the Plan as further ordered by this
16 Court.

17
18 5. The Plan shall be administered and managed as further ordered by the Court
19 upon motion by the Secretary. Such motion shall be made within sixty days after the en-
20 try of this Consent Judgment & Order.

21 6. Defendant Do shall restore to the Plan the Amount Due:

22 a. By January 1, 2016, and every six months thereafter on or before the
23 fifteenth day of the month, Defendant Do shall prepare and submit to the Independent
24 Fiduciary appointed by further Order of this Court ("Independent Fiduciary"), a report
25 on the Official Bankruptcy Form 22C (Chapter 13 Statement of Current Monthly Income

26
27 ² The parties have stipulated to the full nondischargeability of the Amount Due in
28 a Joint Stipulation as to Nondischargeability of Debt filed contemporaneously herewith
in the related case of Solis v. Cuong Viet Do, Case No. C10-04026 LHK. A copy of
said stipulation is attached hereto as "Exhibit C" and its terms
incorporated by reference herein.

1 and Calculation of Commitment Period and Disposable Income) to determine the ex-
2 pected monthly "Disposable Income," as defined in Section 1325(b)(2) of the Bank-
3 ruptcy Code, 11 U.S.C. § 1325(b)(2); and

4 b. The Independent Fiduciary shall compute a monthly payment by am-
5 ortizing the Amount Due to the Plan over 120 months. The amortization shall include
6 the application of interest at the post judgment federal rate under 28 U.S.C. § 1961
7 ("Monthly Payment");

8 i. Interest shall accrue once this Consent Judgment & Or-
9 der has been entered by this Court and shall continue to accrue and be assessed until all
10 losses have been restored to the Plan.

11 ii. If Defendant Do's Disposable Income exceeds the appli-
12 cable median family income as provided for in 11 U.S.C. § 101(39A), the Monthly
13 Payment under paragraph 6(b), *supra*, shall be at least 25% of the amount over the ap-
14 plicable median family income but in no event shall the Monthly Payment be lower than
15 the amount calculated as specified in paragraph 6(b), *supra*.

16 c. Beginning on April 1, 2016, and on the first of every month thereaf-
17 ter for a duration of 120 months, Defendant Do shall remit the Monthly Payment to the
18 Independent Fiduciary.

19 d. In the event of default by Defendant Do in making any of the
20 Monthly Payments, Defendant Do shall have fifteen days to cure the default. If Defen-
21 dant Do fails to cure the default, the total remaining balance of the Amount Due plus in-
22 terest accruing shall then become immediately due and payable, and interest shall con-
23 tinue to accrue until the total remaining balance of the Amount Due plus interest accru-
24 ing is paid in full.

25 e. Defendant Do shall retain the right to prepay the Amount Due plus
26 applicable interest under this paragraph.

27 f. To the extent that Defendant Do's bankruptcy proceeding under Chapter 11
28 of the Bankruptcy Code remains ongoing, he will incorporate the payments described in

1 Paragraph 6, *infra*, into the plan of reorganization for the submission to the Bankruptcy
2 Court. The terms of paragraph 6, *infra*, remain binding if the proceeding under Chapter
3 11 of the Bankruptcy Code is converted to a proceeding under chapter 7 of the Bank-
4 ruptcy Code or in any subsequent case under Chapter 7 or any other Chapter of the
5 Bankruptcy Code. The payment plan under paragraph 6 is binding on Defendant Do
6 even if it is not approved by the Bankruptcy Court.

7 7. Within fifteen business days of making each Monthly Payment set forth in
8 Paragraph 6, *supra*, Defendant Do shall provide a copy of the front and back of each re-
9 mittance check, or other appropriate evidence that such payment has been made.

10 8. Defendant Do hereby forfeits any accrued interest he may have in any
11 amounts under the Plan and any amounts restored to the Plan as a result of this Com-
12 plaint and Consent Judgment & Order. In addition, a spousal waiver has been executed
13 by any person who claims or who may claim through Defendant Do any interest in any
14 amounts restored to the Plan under this Complaint and Consent Judgment & Order. An
15 executed copy of the spousal waiver, the terms of which are incorporated into this Con-
16 sent Judgment & Order by reference, is attached hereto as Exhibit B.

17 9. On, May 2, 2011, pursuant to 29 C.F.R. § 2570.85(a)(2), Defendants Do
18 and The Mili Group petitioned for a pre-assessment hardship waiver of the 20 percent
19 civil penalty under ERISA § 502(l), 29 U.S.C. § 1132(l). On May 6, 2011, the Em-
20 ployee Benefits Security Administration, granted the hardship waiver, contingent on the
21 execution and entry of this Consent Judgment & Order. Therefore, the United States
22 Department of Labor will not make a civil penalty assessment pursuant to ERISA
23 § 502(l), 29 U.S.C. § 1132(l).

24 10. Defendant Do shall be solely and individually responsible for making the
25 payments specifically identified for him in Paragraph 6, *supra*.

26 11. Whenever a submission is required to be made to the Secretary under the
27 terms of this Consent Judgment & Order, such submission shall be made to:
28

1 Regional Director
2 U.S. Department of Labor
3 Employee Benefits Security Administration
4 90 Seventh Street, Suite 11-300
5 San Francisco, California 94103-1516
6 Telephone number: (415) 625-2481
7 Facsimile number: (415) 625-2450

8 12. Defendants expressly waive any and all claims of any nature which they
9 have or may have against the Secretary, the Department of Labor, or any of its officers,
10 agents, attorneys, employees or representatives, arising out of or in connection with the
11 allegations contained in the Complaint on file in this action, any other proceedings or in-
12 vestigation incident thereto or based on the Equal Access to Justice Act, as amended.

13 13. The Secretary and all Defendants shall each bear their own costs, expenses,
14 and attorneys' fees incurred to date in connection with any stage of this proceeding, in-
15 cluding but not limited to attorneys' fees which may be available under the Equal Access
16 to Justice Act, as amended.

17 14. Nothing in this Consent Judgment & Order is binding on any governmental
18 agency other than the United States Department of Labor, Employee Benefits Security
19 Administration.
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21 15. This Court retains jurisdiction of this action for purposes of enforcing com-
22 pliance with the terms of this Consent Judgment & Order.
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24 16. By signing their names to this Consent Judgment & Order, the parties rep-
25 resent that they are informed and understand the effect and purpose of this Consent
26 Judgment & Order.
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1 17. This Consent Judgment & Order may be executed in counterparts, each of
2 which shall be deemed to be an original, but all of which, taken together, shall constitute
3 one and the same instrument.

4
5 The Court directs the entry of this Consent Judgment & Order as a final order.

6 IT IS SO ORDERED.

7
8 Dated: May 27, 2011
9 _____

Lucy H. Koh

United States District Judge

1 Entry of this Consent Judgment & Order is hereby consented to:


2
3 Dated: 5-20-2011

M. PATRICIA SMITH
Solicitor of Labor

6 LAWRENCE BREWSTER
Regional Solicitor

8 DANIEL J. CHASEK
Associate Regional Solicitor

10 DANIELLE L. JABERG
Counsel for ERISA

12 By: 
13 BORIS ORLOV
14 Trial Attorney

15 Attorneys for HILDA L. SOLIS, Secretary of
16 Labor,
17 United States Department of Labor

18
19 Dated: _____

20 LARS T. FULLER, FULLER LAW FIRM
21 Attorneys for Defendants

22
23 Dated: _____

24 CUONG VIET DO

25
26 Dated: _____

27 THE MILI GROUP, INC.
28

Entry of this Consent Judgment & Order is hereby consented to:

Dated: _____

M. PATRICIA SMITH
Solicitor of Labor

LAWRENCE BREWSTER
Regional Solicitor

DANIEL J. CHASEK
Associate Regional Solicitor

DANIELLE L. JABERG
Counsel for ERISA

By: _____

BORIS ORLOV
Trial Attorney

Attorneys for HILDA L. SOLIS, Secretary of
Labor,
United States Department of Labor

Dated: 5/20/2011


SAM TAHERIAN
~~LARS T. FULLER~~, FULLER LAW FIRM, PC
Attorneys for Defendants

Dated: 5/18/2011


CUONG VIET DO

Dated: 5/18/2011


THE MILI GROUP, INC.

CUONG VIET DO, President

Dated:

5/18/2011


THE MILI GROUP RETIREMENT PLAN

EXHIBIT A – LIST OF ELIGIBLE PLAN PARTICIPANTS

Cristeta Bautista

Minha Do

Tuan Do

Vivian Doan

Hue Kieu

Helen Lau

Kim Le

Katlyn Ngo

Ryan Nguyen

Wile Nguyen

Katherine Orr

Shanna Parks

Ana Pham

Viet Pham

Kevin Pham

Annabel Rodabaugh

Victor Ton

Hung Tran

Michelle Tran

Laami Yusi

CUONG VIET DO, President

Dated: _____

THE MILI GROUP RETIREMENT PLAN

EXHIBIT A – LIST OF ELIGIBLE PLAN PARTICIPANTS

Cristeta Bautista

Minha Do

Tuan Do

Vivian Doan

Hue Kieu

Helen Lau

Kim Le

Katlyn Ngo

Ryan Nguyen

Wile Nguyen

Katherine Orr

Shanna Parks

Ana Pham

Viet Pham

Kevin Pham

Annabel Rodabaugh

Victor Ton

Hung Tran

Michelle Tran

Laami Yusi

EXHIBIT B - CONSENT OF SPOUSE TO WAIVER OF BENEFITS

NAME OF PLAN: The Mili Group Retirement Plan.

I, Minha Do, declare that:

1. I am the wife of Cuong Viet Do and hereby consent to my husband's waiver of all rights to receive any benefit payments and return of contributions from the Plan, including my interest in receiving survivorship benefits under the Plan.
2. I have read and fully understand the Consent Judgment & Order, of which this Consent of Spouse to Waiver of Benefits is a part.
3. This waiver constitutes an effective waiver of any right I may have to that portion of the qualified joint and survivor annuity and/or qualified preretirement survivor annuity form of benefit, pursuant to § 205(c) of ERISA, 29 U.S.C. § 1055(c), which is being forfeited pursuant to the aforementioned Consent Judgment & Order, or which may be forfeited in the future, as described in Paragraph 1.

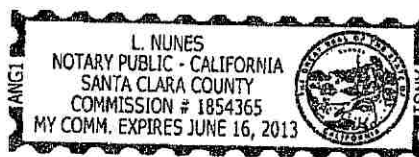
Dated: 5/18/11

Minha
MINHA DO

Sworn and subscribed before me
this 18 day of May, 2011.

NOTARY PUBLIC

L. Nunes

My Commission Expires: 6/16/13

(Knowingly and willfully making false, fictitious, or fraudulent statements to the United States Department of Labor is punishable under Title 18, § 1001, United States Code.)

EXHIBIT C

1 Lawrence Brewster
Regional Solicitor
2 Daniel J. Chasek
Associate Regional Solicitor
3 Danielle L. Jaberg, (CSBN 256653)
Counsel for ERISA
4 **Boris Orlov**, Attorney (CSBN 223532)
Office of the Solicitor
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6 Los Angeles, California 90071-1202
7 Telephone: (213) 894-5410
Facsimile: (213) 894-2064
8 orlov.boris@dol.gov

9 Attorneys for the Plaintiff
United States Department of Labor

10
11 UNITED STATES DISTRICT COURT
12 FOR THE
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 **HILDA L. SOLIS**,
Secretary of Labor,
United States Department of Labor,
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17 Plaintiff,

18 v.

19 **CUONG VIET DO**, an individual
20 Defendant.
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) Case No. C10-04026 LHK

) Related Case No. C10-03823 LHK

) **JOINT STIPULATION AS TO**
) **NONDISCHARGEABILITY OF**
) **DEBT**

1 COMES NOW Plaintiff-Creditor HILDA L. SOLIS, Secretary of Labor, United
2 States Department of Labor ("Secretary"), on behalf of the Mili Group Retirement Plan
3 ("Plan"), and Defendant-Debtor Cuong Viet Do, debtor in the above-captioned case
4 ("Debtor"), having agreed to resolve any dispute as to the dischargeability of the debt
5 owed by the Debtor to Plan, and hereby consent to the following Stipulation as to Non-
6 dischargeability of Debt ("Stipulation") and entry of an Order from the Court in accor-
7 dance herewith:

8 1. On August 17, 2010 the Secretary filed her Adversarial Complaint in the
9 United States Bankruptcy Court for the Northern District of California (Bankruptcy
10 Case No. 10-05286), alleging that the debt owed to the Plan is nondischargeable pursu-
11 ant to Section 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).

12 2. On August 26, 2010, the Secretary filed her related Complaint in the
13 United States District Court for the Northern District of California (Case No. 10-
14 03823), alleging the Debtor breached Sections 403, 404 and 406 of ERISA, 29 U.S.C.
15 §§ 1103, 1104 and 1106.

16 3. On September 1, 2010 the Secretary filed a Motion to Withdraw the Refer-
17 ence of the Adversary Complaint from the Bankruptcy Court to the District Court.

18 4. On November 17, 2010, Judge Jeremy Fogel for the United States District
19 Court for the Northern District of California granted the Secretary's Motion to With-
20 draw the Reference of the Adversary Complaint from the Bankruptcy Court to the Dis-
21 trict Court. The Court assigned the withdrawn Adversary Complaint Case. No. 10-
22 04026.

23 5. On December 14, 2010, Magistrate Judge Howard R. Lloyd found that the
24 Adversary Complaint and the District Court Complaint were related and both cases
25 were reassigned to District Judge Lucy H. Koh.
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1 6. On January 24, 2011 and February 23, 2011, the Clerk entered a default
2 against all named Defendants and against the Debtor, respectively, in Case Nos. 10-
3 03823 and 10-04026.

4 7. Debtor acknowledges receipt of the Secretary's Adversary Complaint in
5 this action and hereby waives service of process of the Summons and Adversary Com-
6 plaint.

7 8. This Court has jurisdiction over the parties and the subject matter of this
8 Stipulation.

9 9. The parties stipulate that the default shall be set aside and an Order pursu-
10 ant to this Stipulation entered.

11 10. The Debtor is, and was, at all relevant times, a fiduciary of the Plan within
12 the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

13 11. The Plan is an employee benefit plan within the meaning of Section 3(3) of
14 the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §
15 1002(3).

16 12. The Secretary alleges that the Debtor breached Sections 403, 404, and 406
17 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106, by making unauthorized trans-
18 fers/withdrawals from the Plan.

19 13. As a result of the alleged breaches set forth in Paragraph 11, *supra*, the par-
20 ties agree that the Debtor owes \$155,000 to the Plan.

21 14. The Debtor agrees that the identified debt of \$155,000 is nondischargeable
22 within the meaning of Section 523(a)(4) of the Bankruptcy Code, 11 U.S.C.
23 § 523(a)(4).

24 15. The parties therefore consent to an entry of an Order that the debt of
25 \$155,000 to the Plan shall be nondischargeable and consent to the entry of an Order that
26 the debt shall be a nondischargeable debt under Section 523(a)(4) of the Bankruptcy
27 Code, 11 U.S.C. § 523(a)(4), without the need for a trial or adjudication of any issue of
28

1 fact or law.

2 16. The parties agree that the Debtor will repay the debt to the Plan according
3 to the payment schedule set forth in the Consent Judgment & Order submitted in Case
4 No. 10-03823. Such payment schedule shall include the assessment of interest. The
5 Debtor further represents that all payments made pursuant to the payment schedule con-
6 tained therein will not be made from the bankruptcy estate.

7 17. While Section 524 of the Bankruptcy Code, 11 U.S.C. § 524, provides that
8 any agreement for the nondischargeability of debt may be rescinded at any time prior to
9 discharge or within sixty (60) days after such agreement is filed with the court, which-
10 ever occurs later, Debtor agrees that he will not rescind this Stipulation.

11 18. The parties understand that this agreement is not required under Title 11 of
12 the United States Code or under non-bankruptcy law.

13 19. The Debtor expressly waives any and all claims of any nature, which he
14 has or believes he may have against the United States Department of Labor, the Secre-
15 tary, or any of her officers, agents, employees, or representatives, arising out of or in
16 connection with the filing, prosecution, and maintenance of this adversary proceeding
17 and any other proceeding or investigation incident to this adversary proceeding.

18 20. The parties shall bear their own costs, expenses, and attorneys' fees in-
19 curred in connection with any stage of the above-referenced proceeding to date, includ-
20 ing but not limited to, attorneys' fees which may be available under the Equal Access to
21 Justice Act, as amended.

22 21. Nothing in this stipulation is binding on any governmental agency other
23 than the Employee Benefits Security Administration, United States Department of La-
24 bor.
25

26 //

27 //

1 The undersigned consent to the foregoing Stipulation and consent to the entry of
2 an Order from the Court consistent herewith:

3
4 Dated: _____

Dated: 5/18/2011

5 M. PATRICIA SMITH
6 Solicitor of Labor


CUONG VIET DO

7 LAWRENCE BREWSTER
8 Regional Solicitor

9 DANIEL J. CHASEK
Associate Regional Solicitor


~~LARS T. FULLER~~, Fuller Law Firm, PC
Attorneys for Defendants

10 DANIELLE L. JABERG
11 Counsel for ERISA

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13 BORIS ORLOV
Trial Attorney

14 Attorneys for HILDA L. SOLIS,
15 Secretary of the United States Department of Labor
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1 The undersigned consent to the foregoing Stipulation and consent to the entry of
2 an Order from the Court consistent herewith:

3
4 Dated: 5-20-2011

Dated: _____

5 M. PATRICIA SMITH
6 Solicitor of Labor

CUONG VIET DO

7 LAWRENCE BREWSTER
8 Regional Solicitor

9 DANIEL J. CHASEK
Associate Regional Solicitor

LARS T. FULLER, Fuller Law Firm
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11 Counsel for ERISA

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16 Secretary of the United States Department of Labor
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